

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Belinsky, Tammy; Harold McCall; and Carol White	<p>The wind resources sought to be exploited by the industrial wind industry are largely located on the most remote and previously undeveloped mountain ridges in Virginia. The areas that are sought to be developed are extraordinarily remote and in many cases the wildlife and natural resources that thrive on these islands of diversity have not been inventoried or documented to know even what is at risk. 1) The economic analysis required is inadequate because it fails to address the cost of enforcement. 2) The authorizing statute for the proposed regulation is vague and unconstitutional. Virginia Code §10.1-1197.6 (B) (8) is triggered on the finding that "significant adverse impacts to wildlife or historic resources are likely". Significance is a subject measure that is not defined by the Code. 3) The proposed regulation appears to attempt to illegally pre-empt federal authority to protect threatened and endangered species under the federal endangered species act. It should be made clear that applicants must still fulfill all federal requirements. 4) DEQ must demonstrate exactly how the permit will protect the health, safety and welfare of Virginia citizens when the permit does not purport to regulate human health whatsoever, and beyond that how a license to kill wildlife protects human health. 5) The definition of "disturbance zone" is arbitrary. 6) The coarse filter analysis that</p>	<p>All comments accepted and taken into consideration during the drafting of the regulation amendments.</p> <p>Additional notes concerning specific comments:</p> <p>(1) DEQ staff considered the costs of both "administering and enforcing" the permit by rule when it suggested the proposed permit fees, as required by the statute. Issue resolved through consensus of members of the Regulatory Advisory Panel.</p> <p>(2) The statute cannot be changed by regulatory action.</p> <p>(3) Federal requirements are not pre-empted. State regulations are generally silent regarding requirements of other levels of government unless directed by legislation to reference them.</p> <p>(4) The statute defines the reach of this regulation and limits it to "natural resources." Issue previously addressed during discussions of the Regulatory Advisory Panel.</p>

	<p>starts the wildlife impact assessment is entirely inappropriate for the areas where wind resources are desirable for exploitation. The desktop analysis prescribed is wholly inadequate, improper, and reckless for use in areas that have not been investigated or even visited to enable to catalogue and quantify natural resource assets. 7) The Department has not justified the use of a two mile boundary for desktop analysis. The Department gives no support for any of the limited criteria proposed. 8) The Department is wholly unqualified to review, approve, enforce, and modify wildlife impact mitigation plans. The implementation of the mitigation procedures is ill-defined and unworkable. 9) Any proposed amendments to mitigation plans must be subject to real public participation and the appellate review process. 10) Segmentation of projects and cumulative impacts of multiple projects need to be addressed in the rule. 11) The proposed rule, as written, appears to circumvent the requirements of the National Historic Preservation Act (NHPA). Under that Act, the Commonwealth of Virginia is legally obligated to conduct a formal review of any proposed project which may significantly impact any site on the National Register of Historic Places. Such review requires that a site-by-site survey be conducted prior to issuance of a permit. A disciplined survey and review of each and every historic site within the viewshed is required prior to issuance of any permit. An adequate survey would be, de facto, incompatible with the type of automatic permit issuance system envisioned in the proposed rule. 12) The enforcement provisions as proposed are meaningless as enforcement is completely</p>	<p>Issues raised in comments (5)-(7) were previously addressed and resolved through consensus of the members of the Regulatory Advisory Panel.</p> <p>(8) The General Assembly decided that DEQ should be the agency to assess whether the application meets the applicable permit by rule regulations and, after consulting with other agencies in the Secretariat of Natural Resources, determine whether to approve or not. These other agencies have subject-matter expertise concerning the issues encompassed by the statute. In addition, experts from all stakeholder groups served on the Regulatory Advisory Panel and resolved all but three sub-issues by consensus. The permit by rule itself therefore sets forth, in large part, the standards by which mitigation plans should be approved, enforced, etc. The RAP also recommended further information for DEQ Guidance, which will be incorporated when Guidance is written after the regulation becomes final.</p> <p>Public participation and project impacts were addressed during discussions of the Regulatory Advisory Panel, to the extent of DEQ's statutory authority. Review and appeals are governed by the Administrative Process Act. Comments acknowledged and taken into consideration.</p> <p>(11) Historic resources requirements were previously resolved through consensus of the members of the Regulatory Advisory Panel, which included a representative and an alternate representative from the Virginia Department of Historic Resources.</p>
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	discretionary.	(12)The enforcement provisions of the renewable energy statute are among the most extensive found in any state law, and all statutory provisions are incorporated by reference into the proposed regulation. The proposed regulation then includes even further enforcement provisions that have been utilized in other DEQ regulations.
Carr, David - Southern Environmental Law Center	<p>1) Public Participation - Comments made during the 30-day comment period should be submitted to the agency. The applicant can then respond to the comments that the agency receives. The 3--Day comment period should run from the day of the public meeting. The applicant should be required to submit the notice of intent to the Virginia Register at the earliest possible time, and prior to the notice of the public comment period and public meeting. 2) Natural Resource Impacts - The regulation needs to make clear that DEQ may find significant adverse impacts in other circumstances in addition to bats and state-listed T&E wildlife, i.e. raptors, breeding birds and non-avian resources. These "other wildlife" should be in the consideration for significant adverse impacts analysis and mitigation where significant adverse impacts are found. The regulations must make clear that DEQ can find significant adverse impacts based on its review of the analysis developed in situations other than the two listed in the proposed regulations (bats and state-listed T&E species). The requirement that the combined cost of mitigation and post-construction monitoring shall not exceed 120 hours of curtailment per year per turbine seems arbitrarily low and may fail to protect certain bat species. If there is to be a limit, it should be higher and fully supported by meteorological data and credible sources. 3) Scenic Resources - The regulation should require a</p>	<p>All comments accepted and taken into consideration during the drafting of the regulation amendments.</p> <p>Additional notes concerning specific comments:</p> <p>Issues raised in comment 1 were previously resolved through consensus of the members of the Regulatory Advisory Panel. Timing of the notice of intent will be addressed further either in regulatory amendments, DEQ Guidance, or both.</p> <p>Issues raised in comment 2 were previously addressed during discussions by the Regulatory Advisory Panel. With the exception of whether Tiers 1 & 2 Species of Greatest Conservation Need (SGCN) vertebrates should constitute a trigger for mandatory mitigation, the members of the Regulatory Advisory Panel resolved these issues through consensus. The department's decision not to include SGCN as a trigger for mitigation is explained in the Town Hall Document -02 submitted with the proposed regulation.</p> <p>Issues relating to scenic resources (comment 3) were previously resolved through consensus of the members of the</p>

	view shed analysis for the following trail resources: national historic trails, national recreation trails, and the Great Eastern Trail.	Regulatory Advisory Panel, which included a representative from the Department of Conservation & Recreation whose specialty is scenic resources.
Dodds, Pam - Montrose, WV	<p>The proposed "Permit by Rule" should be totally discarded. In order to develop a "Permit by Rule" to satisfy the 2009 statute directing DEQ to do so, the DEQ must become educated concerning all aspects of wind energy development and must maintain consistency with existing Virginia environmental laws. 1) The basis of megawatt nameplate capacity for categorizing wind projects is flawed and demonstrates a lack of understanding concerning wind power. Residential wind turbines are designed to produce 100 kilowatts, or less, of electricity. These wind turbines are usually less than 30 feet tall, and the excess electricity produced can be stored in batteries for later use. The categories should be based on a more realistic division of the nameplate capacity of individual wind turbines used for different purposes: those at the residential level as distinguished from industrial scale wind turbines. 2) Given that DEQ limited the concern "trigger" to threatened and endangered species, stating it would be too costly to industry to establish safety for other vertebrates, the DEQ should have a study conducted or draw upon EPA data to have a realistic interpretation of the impact at the sub-watershed and larger watershed levels. 3) DEQ should adopt the alternative of NO BUILD in areas where bats are known to roost in trees or hibernate in caves within a 50 mile radius of the proposed wind project and in areas within any 300 mile migratory pattern. It has already been established in studies by bat experts that bat</p>	<p>All comments accepted and taken into consideration during the drafting of the regulation amendments.</p> <p>Additional notes concerning specific comments:</p> <p>(1) Pursuant to proposed section 9VAC15-40-130, projects of 500 kW and less are totally exempt from permit by rule requirements, thereby distinguishing residential-scale projects from larger projects. In the same section, limited notification requirements are proposed for community-scale projects (approximately 500 kW to 5 MW). The full permit by rule requirements are proposed for industrial-scale projects over 5 MW, up to the statute's specified limit of 100 MW. Comment acknowledged and taken into consideration.</p> <p>(2) The issue of appropriate wildlife "triggers" for mandatory mitigation plans was addressed during discussions of the Regulatory Advisory Panel. With the exception of Species of Greatest Conservation Need Tiers 1 & 2 Vertebrates (the only additional "trigger" put on the table by RAP members at the RAP's closing meeting; please see explanation of discussions in the Town Hall -02 document), the issue was resolved through consensus of the members of the RAP.</p> <p>(3) The issue of how to address impacts on bats was previously resolved through consensus of the members of the Regulatory Advisory Panel.</p>

	<p>mortality is so great that wind projects are referenced with regard to the number of bats killed per turbine. Additionally, the slaughter of bats by industrial scale wind turbines cannot be mitigated because it is the mating behavior of male bats to seek the highest tree, which they perceive to be the wind turbine itself. The "trigger" proposed by DEQ for mitigation concerning bat mortality is a violation of Virginia's laws protecting wildlife. It is an obvious conclusion that lawsuits will result from such a provision in the "Permit by Rule". 4) The DEQ, not the wind company owner or operator, must be responsible for obtaining public comments on all proposed industrial scale wind projects and provide an avenue for submittal and review of expert testimony. 5) An ecologic unit or watershed-based approach is necessary to adequately determine the impact on natural heritage species and natural resources as a result of destruction caused by construction of industrial scale wind turbine projects. 6) The "Permit by Rule" must specify the DEQ's responsibility to assure and enforce the requirements of the Code of Virginia that pertain to Virginia Erosion and Sediment Control (ESC) Regulations. DEQ will no doubt receive numerous lawsuits if the "Permit by Rule" does not cause it to enforce existing environmental laws established by the Code of Virginia. 7) The PBR should require the use of "Best Management Practices"; 8) The PBR should provide for a "No Build" alternative; 9) The PBR should include requirements related to "noise". For human health, there must be set-back limits from existing homes. 10) Wind data should be public information. Wind companies typically require that the wind data from their wind project sites</p>	<p>(4) Issue resolved through consensus of the members of the Regulatory Advisory Panel. Comment acknowledged and taken into account.</p> <p>(5) Issue resolved through consensus of the members of the Regulatory Advisory Panel. Comment acknowledged and taken into account.</p> <p>(6) This issue was addressed by the Regulatory Advisory Panel with benefit of legal advice from the Office of the Attorney General. Erosion and sediment issues fall under the authority of the Department of Conservation and Recreation, not under DEQ. To the extent that E&S-related permits are necessary, the applicant is required by DEQ's permit by rule statute to submit, within the application, a certification that the applicant has received or applied for these permits (and all necessary environmental permits).</p> <p>(7) & (8) Recommendations noted and taken into consideration. Also, these issues are part of the broad array of options considered by the RAP; the consensus recommendations of the RAP were adopted by DEQ.</p>
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	<p>should be proprietary. 11) The evidence indicates that there is no meaningful electricity being produced by the wind turbines and that the burden of cost is on the taxpayer and electric ratepayer. The "Permit by Rule" should specify that the financial information must be public information. 12) The Economic Analysis document indicates that real estate value will increase for wind projects, but does not address the fact that most real estate is leased for this and there is no evaluation of reduction of value because people don't want property near wind projects.</p>	<p>(9) Noise and setback issues were discussed by RAP, with benefit of legal advice from OAG. Resolved through consensus not to be within DEQ's statutory authority, but rather under the purview of local government.</p> <p>(10) & (11) All data/documents submitted to DEQ with relation to the wind PBR are public documents.</p> <p>(12) Comment acknowledged and taken into consideration.</p>
<p>Dodds, Jr. Arthur W. - Laurel Mountain Preservation Association, Inc.</p>	<p>The proposed "Small Renewable Wind Energy Projects Permit by Rule" is deficient in several categories and will only serve to cause further destruction of the environment. 1) The statements that "avoiding additional electrical generation from fossil fuels and creating energy independence from foreign oil interests are inaccurate; i.e., Coal-fired generation plants must be used as spinning reserves for wind energy facilities; extra coal or additional gas peaking units must be used to ramp up or down in order to integrate wind energy into the grid; carbon dioxide is emitted from the curing of significant amounts of concrete used in the construction of wind energy facilities; and less than 2% of the oil used in the US is for electricity. There is no scientific basis supporting any statement that wind energy could reduce the use of oil in the US. 2) There may be only 2 or 3 jobs created for each wind project. 3) Wind energy is not environmentally friendly. It is well documented</p>	<p>All comments accepted and taken into consideration during the drafting of the regulation amendments.</p> <p>Additional notes concerning specific comments:</p> <p>(1) – (3) Comments acknowledged and taken into consideration.</p>

	<p>that wind turbines kill hundreds of thousands of bats and birds every year (recorded as number of deaths per megawatt). 4) The regulations in the PBR do not provide any comment concerning the requirements for NPDES permits and do not indicate the responsibilities of DEQ with regard to site inspection or collaboration with DCR for guidance in issuing NPDES permits. Further, there is no guidance about the process for insuring that construction should not occur if NPDES requirements are not met. 5) The deforestation of mountain ridges for wind project construction is significantly not environmentally friendly. Not only does such deforestation reduce carbon dioxide sequestration and regulation of water vapor into the atmosphere, but it also causes greater stormwater runoff from precipitation, thereby increasing quantities and velocities of stream water flow in addition to decreasing groundwater recharge. 6) The PBR specifies only two categories of wind projects: those less than 5 MW and those equal to or greater than 5 MW. The smaller residential wind turbines mostly produce 100 kilowatts or less, are less than 30 feet tall and can store excess electricity in batteries. The larger community and industrial wind turbines have a nameplate capacity of at least 1.5 megawatts, are greater than 450 feet tall and cannot store excess electricity, that they have to have a connection to the grid and ramp up and down capabilities through either coal fired or gas-fired generators. 7) The provision in the PBR for there to be only a 30-day comment period managed and summarized by the wind construction company is totally deficient and is an insult to the citizens of Virginia. The SCC</p>	<p>(4) Pursuant to both the statute and proposed regulations, the applicant must certify that he has “applied for or obtained all necessary environmental permits” (9VAC15-40-30 A 12). If a “NPDES” permit (administered in Virginia as “VPDES”) is necessary, then the applicant must go through all the separate procedures of applying for and complying with that permit, under DEQ’s separate regulatory and enforcement authority for that permit program. The PBR does not abrogate the authority of DEQ or any other permitting agency for those separate permits. The PBR provisions are independent, additional requirements.</p> <p>(5) Forestry issues addressed and resolved through consensus of the members of the Regulatory Advisory Panel, consistent with legal advice from the OAG concerning the scope of DEQ’s authority to require mitigation for resources that are not “wildlife” or “historic resources.” The RAP included a representative of the Department of Forestry.</p> <p>(6) Please see proposed 9VAC15-40-130, which provides that projects smaller than 500 kW are not required to meet PBR requirements. Comment acknowledged and taken into consideration.</p> <p>(7) Issue resolved through consensus of the members of the Regulatory Advisory Panel. Further note: The requirements of the statute cannot be changed by regulation, and the statute prescribes a process very different from the SCC process. The PBR process is governed by the Administrative Process Act, which</p>
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	<p>allowed months for stakeholders to evaluate the proposed projects. It is imperative that DEQ manage cases in a manner similar to that of the SCC to maintain the rule of evidence. It is critical that wind companies and corporations must not be allowed to control "due process". 8) In order to facilitate proper evaluation of environmental studies conducted by wind companies, all studies should be submitted to reputable scientific journals for peer review prior to being accepted by DEQ for evaluation. 9) It is critical to the welfare of the environment and to the welfare of Virginia citizens that the PBR be totally discarded and replaced with an equitable approach that considers all of the deficiencies expressed above. It is essential that DEQ must become informed about the negative impacts caused by the construction of wind projects, even if it is not "politically correct" or "industrially friendly" to protect the environment from industrialization.</p>	<p>provides due process for all parties.</p> <p>(8) Comment acknowledged and taken into consideration.</p> <p>(9) The PBR format is prescribed by statute and statutory provisions can only be altered or replaced by the General Assembly, not by regulatory action.</p>
Eccles, Stephen D. - Virginia Society of Ornithology	<p>The comments provided by Mr. Rick Webb and Ms. Lucile Miller on the draft regulations raise several serious questions that need to be addressed by DEQ before the draft regulations could be considered satisfactory from the point of view of bird conservation.</p>	<p>Comment acknowledged and taken into consideration. Responses to the comments of Mr. Webb and Ms. Miller appear elsewhere in this document.</p>
Fernald, Ray - DGIF	<p>In the references section for "internet applications" the mailing address for the 3rd source should read "Fish and Wildlife Information Service". It is currently missing the word "information."</p>	<p>This correction has been made.</p>
Firor, Eve - Friends of Beautiful Pendleton County	<p>1) These presently written PBR requirements seem to circumvent the very Federal and Commonwealth laws written and designed for the protection of the environment and do not provide for input from the Federal and commonwealth agencies charged</p>	<p>All comments accepted and taken into consideration during the drafting of the regulation amendments.</p> <p>Additional notes concerning specific comments:</p> <p>(1) First, federal requirements are not</p>

	<p>with the enforcement of those laws. 2) Under these presently written PBR requirements there would be little or no input from the public who are the most significantly affected. 3) Under this PBR there will be a proliferation of industrial wind energy projects with little or no environmental review and mitigation requirements. 4) This PBR provides little or no consideration for the potential damaging effects caused by the infrastructure of these industrial wind energy projects (i.e. roads; trenches; foundations and property disturbance; mountain tops; hydrology; habitat loss; rights-of-way; substations; grid connections; collateral damages; concrete production and transport; noise pollution issues of vehicles and equipment during the construction phase; noise pollution issues to excavate turbine foundations and trenches during the construction phase; noise pollution issues of equipment during operational phase; light pollution; state and county emergency service requirements and responsibilities are non-existent; comprehensive environmental impact study and report should be mandatory, scrutinized, questioned and verified; fully comprehensive detailed carbon audit should be a mandatory part of the comprehensive environmental impact study, scrutinized, questioned and verified; and comprehensive cultural and historical impact studies and reports should be mandatory, scrutinized, questioned and verified. 5) Infrastructure and carbon audits should be closely reviewed by all decision makers in industrial wind energy decisions and applications. 6) Federal and state decision makers should carefully consider the following pieces of legislation: the Endangered Species Act; the</p>	<p>abrogated. State regulations are generally silent regarding requirements of other levels of government unless directed by legislation to reference them. Second, other state requirements are not abrogated. Please see the statute and proposed 9VAC15-40-3- A 12, which requires that all necessary environmental permits be obtained or applied for. These other permits will be approved and enforced by the issuing agency, just as they have always been.</p> <p>(4) & (5) Issues raised in these comments were addressed by the Regulatory Advisory Panel. Comments acknowledged and taken into consideration. Please note that the RAP, consistent with legal advice from the Office of the Attorney General, concluded that noise and similar issues do not fall within DEQ's statutory authority over "natural resources"; authority over these issues lies with local governments.</p> <p>(5) – (8) Comments acknowledged and taken into consideration. Most of these issues were addressed by the Regulatory Advisory Panel, whose consensus recommendations are incorporated in the proposed regulation.</p>
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	<p>National Environmental Protection Act; the Bald Eagle Protection Act; the Migratory Bird Treaty Act; the National Forest Management Act; the Federal Land Policy and Management Act and the National Historic Preservation Act to assess the impact of industrial wind energy projects. 7) Federal and state decision makers must involve the various Federal and state agencies in assessing the impact of industrial wind energy projects. Numerous state laws, regulations, procedures and projects have been enacted or implemented in states for the protection of the environment and citizens within the state and should be given full consideration in decisions to allow siting of industrial wind energy projects in the mountain forests within a state's boundaries. 8) The targets for industrial wind energy projects are remote rural mountains. These areas have caught the attention of historians, anthropologists, biologists, writers, environmental activists and are finally being appreciated for their cultural diversity and environmental history. There is a spiritual mystique to the mountains. Changes to that land should not be taken lightly, especially when those changes may desecrate a way of life that is disappearing rapidly in the United States. Siting an industrial wind energy project in such an area changes the mountain, causing an irreversible and devastating affect on the people and their culture.</p>	
Foster, Dan - Monterey, VA	<p>Proposed Regulation 9VAC 15-40 is not adequate to protect Virginia's natural resources that may be affected by the construction and operation of small renewable energy projects. One insufficient part of the proposed regulation is that projects above 500 kilowatts and below 5 MW are not required to</p>	<p>Comments accepted and taken into consideration during the drafting of the regulation amendments.</p> <p>Further note: Comment regarding PBR requirements for projects between 500 kW and 5 MW is acknowledged and taken into account. The basis of the department's decision on this point is explained in the Town Hall 02 document.</p>

	<p>make an analysis of impacts to natural resources. The rated power capacity of a project is a poor measurement and no determination of the projects potential adverse impact to bat hibernaculum, threatened and endangered wildlife or historic resources. And the legislation does not ask for or require the exemption of analysis of adverse impacts to natural resources for projects below 5MW and above 500 kilowatts as the regulation has granted. I ask that the proposed regulation be rewritten to comply with the legislation that ordered it and to comply with the legislation intended to protect our natural resources.</p>	
<p>Harless, Marion - West Virginia</p>	<p>1) While the rule covers the multitude of variables that are currently being mentioned regarding "development" it seems impossible that the agencies and the public can analyze developers' proposals in 90 days. 2) The fact that DEQ comments indicate a belief that giant wind turbines are a "new environmentally friendly industry" is truly troubling. Such statements show that DEQ is not paying attention to environmental engineering studies let alone the available data on adverse impacts on the points mentioned in the rule. Weather and climate change are involved. Historic sites and bat involvement alone should compel an immediate cessation of industrial scale wind energy development.</p>	<p>All comments accepted and taken into consideration during the drafting of the regulation amendments. Further notes on specific comments: (1) The Administrative Process Act, which governs all of DEQ's permits, requires the department to issue a decision within 90 days after a complete application is submitted. (2) Comment acknowledged and taken into consideration.</p>
<p>JD - Roanoke, VA</p>	<p>1) The regulation will raise the cost of energy in Virginia. Because wind energy is not cost-efficient, it is subsidized. Wind will not replace carbon-based fuels because the wind does not blow when we need it and when it does blow we don't need it. It is terribly inefficient in the mountains. The gross inefficiency must be considered against the amount of environmental impact involved for each PBR - over five</p>	<p>All comments accepted and taken into consideration during the drafting of the regulation amendments. Further notes on specific comments: Issues addressed during discussions of the Regulatory Advisory Panel and generally resolved through consensus.</p>

	<p>miles of ridgeline for each project!</p> <p>2) The continual economic survival of rural communities depends on the concept of rural life and unspoiled countryside, away from the commercial and industrial development that is characteristic of our towns and cities. There are economic impacts. The impression that the regulation leaves is that there are no negative impacts. This is just not true. 3) There are negative scenic resource impacts. The negative impacts on views, which are fundamental to Virginia tourism, will be forever changed. 4) DEQ must expose each project to a more reasonable assessment, not the narrow overview as proposed by the PBR. The distance of scenic resource impacts must be expanded. The loss of property values associated with view should also be determined as a component of each PBR application. This assessment must be available for public comment. 5)The regulation should require applicants to determine impacts to the Blue Ridge Parkway and all other scenic assets at a range that reflects the view - well over 5 miles in the mountains. 6) The Governor's Office should conduct an economic evaluation of the PBR claims. 7) Onsite evaluation of wildlife and plant communities should also be required. The allowance to review impacts two miles away is not reasonable. There should not be an either or choice here both the desktop surveys and the review of impacts should be required; use "and" instead of "or". 8) Community Health Impacts - Community concerns about health, safety, impacts on all wildlife and other natural resources (not just a select few) deserve to be considered in this process, These projects impact local communities. 9) Some</p>	<p>The RAP's recommendations concerning scenic resources and habitat are consistent with advice of OAG regarding the scope of DEQ's authority under the statute. The RAP included a DCR representative who specializes in scenic resources.</p>
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	<p>assessment of the noise impacts to the folks living near these turbines should be required upfront. 10) DEQ should consider the use of a tiered approach to differentiate between turbine complexes of 10 & 100 MW - there is a difference of several miles of impact. 11) How will the stringing of PBR sites be addressed? Has the cumulative impact of multiple projects been considered? 12) The PBR applicant should be required to assess all local community impacts to television, radar systems, air travel, etc. prior to considering coverage under the PBR.</p>	<p>Noise impacts, signal interference, and similar issues were discussed by the RAP. Consistent with legal advice from the OAG, the proposed regulation reflects that such issues are not within the statutory scope of DEQ's authority over "natural resources" and continue to fall under the jurisdiction of local governments.</p>
Karr, Sue - Bent Mountain, VA	<p>The "small wind energy project" is defined in this legislation as any project less than 100 MW rated capacity but common sense tells us that a group of 2.5 MW turbines, say 18, marching across a Virginia ridgeline, producing 45 MW rated capacity and standing over 400 ft. is <u>not a small project</u>. The kinds of analysis for site specific data collection fail to provide clear language, standards, and conditions that are necessary to protect natural resources. Raptor migration surveys are required in the proposed regulations but there are no standards and protocols specified in conducting the surveys (no "upfront" language). The process for protecting water sources is relegated to the Dept. of Conservation and Recreation but county locales and the DCR would be unable to monitor projects the size of industrial wind turbines due to the enormous geographic scale. The DEQ proposed regulation for protecting the area surrounding turbines from massive destruction and pollution of water is dismal.</p>	<p>All comments accepted and taken into consideration during the drafting of the regulation amendments.</p> <p>Further notes regarding specific issues:</p> <p>The definition of "small" is provided in the statute, and the statute can only be changed by the General Assembly, not by regulatory action.</p> <p>The Regulatory Advisory Panel recommended specific procedures to be utilized for the surveys and analyses prescribed in the proposed regulation. Not all of this "how-to" information was deemed by the RAP to be appropriate for the regulation itself. (For instance, some provisions were "suggested" rather than mandatory, some procedures are subject to change as technology advances, etc.) This information will appear in DEQ Guidance, which will be completed after the regulation becomes final. Copies of the RAP's suggested Guidance provisions are available on request.</p>

<p>Laska, Richard M - Laska's Grove</p>	<p>1) The proposed rule appears to circumvent the requirements of the National Historic Preservation Act (NHPA). A disciplined survey and review of each and every historic site within the viewshed is required prior to issuance of any permit. An adequate survey would be, de facto, incompatible with the type of automatic permit issuance system envisioned in the proposed rule. If the proposed rule, does not include adequate procedures to abide by the State's legal obligations under NHPA, then the proposed rule is fatally flawed. 2) The proposed rule fails to take into consideration existing agreements with, and interests of, other governmental entities. Specifically, adjacent States and the Federal government. 3) The cumulative impacts of multiple sites need to be considered and addressed by the PBR. Prior to the approval of any single permit in a particular airshed, an analysis of potential cumulative impacts upon such concerns as natural, economic, historic, aesthetic, environmental and endangered species resources in the vicinity of that airshed is essential. Without such prior analysis, all of those concerns are rendered without value by the first of what may be multiple permits. 4) the presumption that industrial wind facilities are of benefit to electricity consumers, taxpayers, the environment or the citizens of Virginia is assumed without any factual evidence whatsoever. When a rule is propounded, at a minimum it must meet the standard of serving the public interest. There is no data whatsoever on record to justify issuance of this rule based upon the public interest. Precisely what public interest would be served by this rule?</p>	<p>All comments accepted and taken into consideration during the drafting of the regulation amendments.</p> <p>Further notes regarding specific issues:</p> <p>Historic resources issues were discussed and resolved through consensus by the members of the Regulatory Advisory Panel, which included representation from the Department of Historic Resources.</p> <p>Federal requirements are not abrogated. State regulations (including the proposed PBR regulation) are generally silent regarding requirements of other levels of government unless directed by legislation to reference them. Other requirements imposed by the Commonwealth are not abrogated either. Please see the statute and proposed 9VAC15-40-3- A 12, which require that all necessary environmental permits be obtained or applied for. These other permits will be approved and enforced by the issuing agency, just as they have always been.</p> <p>Within the "small renewable energy projects" statute (Chapter 808, 2009 Acts of Assembly), the Virginia legislature determined that renewable energy projects "are in the public interest" (Code of Virginia Section 56-580 D).</p>
<p>McClain, Mark</p>	<p>I fully support the efforts of DEQ</p>	<p>Comments accepted and taken into</p>

<p>Roanoke Valley Cool Cities Coalition</p>	<p>to standardize and expedite the process of permitting of wind energy installations. I strongly urge that regulations regarding wind energy installations are not subjected to a higher threshold of approval that other projects of similar size and impact. While the environmental <u>benefit</u> of a single wind project is hard to calculate, the cumulative benefit of many such projects will be felt in the reduction of emissions from non-renewable fossil fuel-based energy production, and in the long run will yield an inestimable benefit in terms of energy security and air quality.</p>	<p>consideration.</p>
<p>Miller, Lucile</p>	<p>Given well-known and acknowledged environmental/wildlife impacts of industrial scale wind projects on eastern ridges, there is a clear path to lessening those impacts. The proposed permit by rule (PBR) acknowledges the impacts but the monitoring and mitigation called for in the proposed PBR will do little to advance objective, scientific decision-making regarding the lessening of environmental impacts. The PBR gives no directions regarding bat acoustic surveys as to how many nights or the time of year or weather conditions when the surveys shall be carried out. The survey becomes one that can be manipulated to produce a desired result rather than one that produces sound scientific information that can be used to make informed decisions. 1) I request that, before the PBR becomes law, the Virginia Department of Game and Inland Fisheries (and other agencies with needed experience and knowledge) develop protocols</p>	<p>All comments accepted and taken into consideration during the drafting of the regulation amendments.</p> <p>Additional notes regarding specific comments:</p> <p>Monitoring and mitigation were discussed at length by members of the Regulatory Advisory Panel and were resolved through consensus. In addition to the provisions contained in the proposed regulation, the RAP also recommended specific procedures and protocols for surveys and other analyses. These recommendations will appear in DEQ Guidance, which will be drafted after the regulation becomes final. Copies of the RAP's recommended Guidance provisions are available on request.</p>

	<p>and standards for surveys, data collection, and analysis and that these protocols and standards be added to the language in the PBR. If necessary there will be two sets of protocols, one for ridgeline development and one for onshore coastal development. 2) I request that the final PBR include language that states that a wind energy facility permitted under the PBR must be accessible to state and federal agencies operating within the scope of their authority and that the owner/operator cannot require notification for site visits by authorized personnel. 3) I request that the PBR include language stating that all surveys, data and analysis pertaining to natural resources of public interest be made available to the public at least 90 days before the PBR is issued. 4) I request that the PBR include language that expands the audience for the public hearing and public comments to include representatives from Department of Environmental Quality and that a forum be made available for complaints deemed to be of valid concern.</p>	<p>(1) As stated above, these protocols were developed by consensus of the RAP, and DGIF and other agencies were members of the RAP.</p> <p>(2) Right of entry for these projects is set forth in the statute at Section 10.1-1197.10. The statutory provision is self-explanatory and self-effectuating, and the RAP did not recommend repeating the provision within the proposed regulation.</p> <p>(3) & (4) Comment is accepted and will be taken into consideration. Existing provisions reflect the consensus resolution of these issues by members of the Regulatory Advisory Panel.</p>
<p>O'Hara, Frank J. - Allegheny Front Alliance</p>	<p>AFA believes there are serious environmental issues the industrial wind corporations do not address. Regulatory action is essential to protect the health, safety, and welfare of citizens. Effective regulation is critical to protect and conserve unique biological, ecological, geological, geographical, cultural and historic resources. The plan fails to address long range, direct and indirect impacts on environmental quality and cultural resources. 1) The first major issue is rule making for projects over 5 MW rated capacity. The term "small renewable energy project" is inappropriate, misleading and inadequately describes reality. The term "industrial wind turbine</p>	<p>All comments are accepted and taken into consideration during the drafting of regulation amendments.</p> <p>Additional notes regarding specific comments:</p> <p>Comment acknowledged. The term "small renewable energy project" is defined by statute and cannot be changed by regulatory action.</p>

	<p>generation project" represents a more truthful statement. 2) The costs to apply for a wind permit are inadequate. The Virginia filing fee is inadequate. The proposed rule making should not be about "reduced risk, time costs, and administrative costs for small wind energy firms. An inadequate filing fee constrains the ability of DEQ to conduct an effective study review. The proposed rule making should require an effective (not efficient) management process. 3) The development and formal review of project study proposals should include estimated expenses. 4) The analysis of beneficial and adverse impacts requires the desktop survey and maps on wildlife known to occur within the area are inadequate. An important component of wildlife management is habitat analysis because habitat provides food, cover, and other factors required for population survival. Using only visual location will produce bias use patterns. Bat acoustic surveys, mist-netting or harp-trapping surveys should be conducted under the guidelines established by the US Fish and Wildlife Service. 5) Study analysis should extend beyond descriptive measures. All studies should contain spatial and time components. 6) The estimated costs of developing pre-construction studies are inadequate. The industry or the DEQ rule making underestimates the actual costs to develop reports. 7) Recommend removing the statement: "developing and expanding new, environmental friendly industry in Virginia is also a boost for our economy and significant step in creating energy independence from foreign oil interests". The total national electrical energy production using petroleum represents less than 3%. Wind energy will not replace conventional electrical power</p>	<p>Comment acknowledged and taken into consideration. The fees were suggested by DEQ based on many years of experience in administering and enforcing permit programs. The issue was resolved through consensus of the members of the Regulatory Advisory Panel.</p> <p>Comment acknowledged and taken into consideration.</p> <p>Comments acknowledged and taken into consideration. Regarding a number of these comments -- Survey and analysis provisions for wildlife, historic resources, and other natural resources were resolved by consensus of the Regulatory Advisory Panel, which included representatives from DGIF, DHR, and DCR. Detailed protocols for these surveys and analysis were also developed by consensus of the RAP, and they will appear in DEQ Guidance. In many cases, the suggested Guidance provisions will incorporate by reference the existing protocols used by the state agencies. Copies of the RAP's suggested Guidance provisions are available on request. Drafting of Guidance will be completed after the regulation becomes final.</p>
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	<p>using fossil fuels. 8) The proposed rule making omits critical components. The statement "that is included or meets the criteria necessary for inclusion in the landmarks Register" is limiting. Limited state agency resources may prevent interagency consultation. 9) No consideration is attached to county or local historical properties, including birthplaces, cemeteries, or open spaces or cultural landscapes. 10) The proposed rulemaking ignores county authority to enact zoning ordinances or issue building permits. 11) The proposed requirements should require formal consultation with the US Department of Interior, National Register of Historical Places to determine if the proposed project areas, meets federal evaluation criteria. 12) This view shed analysis does not consider county, public property resources, such as The Nature Conservancy (TNC) lands and historical cultural landscapes. There is no description as to method of analysis required. View shed analysis evaluation should not be subjective but should be developed using a set criteria scored standard, developed at the community level. View shed analysis should reflect the project site during the season of winter, spring, summer and fall. 13) A desktop survey analysis is limiting. Habitat of rare and threatened (R&T) species are not obvious. Field survey observations may be required. 14) Desktop surveys and maps are required of coastal avian migration corridors. Missing is avian migration corridors that occur in the Ridge and Valley Zones that show essential wildlife habitats, flyways and important bird areas for songbirds and raptors. The National Aviary should be consulted. 15) The rule making does not require</p>	<p>Both the statute and proposed regulation (9VAC15-40-30 A 2) require certification by the local government that the project "complies with all applicable land use ordinances." Local government certification is a required part of the PBR application.</p> <p>Federal requirements are not abrogated by state law or regulations. They will operate separately from the PBR, just as they always have.</p>
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	<p>consultation with the US Fish and Wildlife Service. All desktop surveys, maps, reports, and studies should be provided to the US FWS for review and comment. Ninety days is an inadequate time length to allow for federal response and consultation. 16) There should be interagency cooperation between local, state and federal agencies. 17) The proposed rule does not require the developer to secure an Incidental Take Permit. This is problematic. 18) The policy recommendations and voluntary guidelines from the Wind Turbine Guidelines Federal Advisory Committee should be considered. 19) Monitoring plans (post-construction) should include a robust adaptive management component that describes the studies to be conducted, anticipated outcomes (hypothesis to be tested) and subsequent series of resources addressing those outcomes. Monitoring should be conducted to determine if the selected responses actually result in a reduction of fatalities. 20) Health and safety standards are missing from this proposed rulemaking. This is a serious omission. 21) Missing elements not addressed include health and safety. Noise can affect individuals living near the site, but also can affect breeding and nesting habits of wildlife. 22) The proposed rule does not include the actual siting requirements, as it pertains to occupied buildings, historical buildings, schools, and roadways. Proper siting is essential to avoid injuries and fatalities. 23) The proposed rulemaking fails to address existing or future emergency communication networks, towers, or electrical equipment. 24) The proposed rulemaking disregards decommission. The conditions required for decommission require identifying the process</p>	<p>DEQ lacks statutory authority to require consultations with or submissions to federal agencies.</p> <p>This regulation is governed by the Administrative Process Act, which provides that the department must render a decision within 90 days after receiving a complete application. This statutory requirement cannot be changed by regulatory action.</p> <p>Virginia law does not provide for an Incidental Take Permit. It is beyond the authority of a state agency to require a federal (USFWS) Incidental Take Permit. Federal agency requirements operate separately from this proposed state regulation.</p> <p>These federal Guidelines were considered by the Regulatory Advisory Panel in discussing and resolving these issues.</p> <p>Proposed provisions in 9VAC15-40-60 (especially subsections B 4, 5, & 6) prescribe just such an adaptive management approach, which was developed and resolved by consensus of the Regulatory Advisory Panel. The RAP also developed provisions for DEQ Guidance that will further delineate how the applicant should perform these functions.</p> <p>Issues raised in comments 20 – 24 were addressed in discussions by the RAP. Consistent with legal guidance from the Office of the Attorney General, siting (land use), noise, signal interference, decommissioning and similar issues were found not to be within DEQ's authority under this statute, and they remain under the purview of local government.</p>
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	<p>and expected outcome, including a bonding requirement. 25) The proposed rulemaking fails to create necessary protections to Virginia's natural resources affected by the construction of industrial wind turbine projects. The proposed rules offer a misleading description of small wind project. The rules inadequately address issues related to historical, scenic, cultural and wildlife resources. The rule does not require consultation with federal agencies, including the US Fish and Wildlife Service and the National Park Service. The rule ignores local governments and community organizations. The rule contains no protective provisions for human health and safety. The rule omits the process of deconstruction and removal should the project become non-operational.</p>	
Porter, Christine - DOD	<p>1) DOD needs earlier and more reliable notice of proposed wind projects to make a timely evaluation of projected impacts to operations and training. The regulations as drafted provide no direct notice to DOD. At present, we estimate we will require 30 to 90 days to review project proposals for unacceptable mission impacts with the various commands and headquarters potentially impacted by a typical wind development.</p> <p>2) We note that the draft regulations leave land use determinations to the locality. This may create uncertainty when there is no locality with jurisdiction over the site. In other words, there may be no applicable land use ordinances. For the sake of certainty, and to ensure land use impacts are properly reviewed, the regulation should designate a state agency to perform this review normally performed by the locality.</p>	<p>All comments accepted and taken into consideration during the drafting of the regulation amendments.</p> <p>Additional notes regarding specific comments:</p> <p>(1) The notice provisions were addressed during discussions of the Regulatory Advisory Panel. In response to input from a representative of DOD, the proposed section 9VAC15-40-90 A was revised during the RAP process. The department will continue to evaluate the notice provisions and consider amendments in the proposed regulation, DEQ Guidance, or both. Notice to specific entities is generally not addressed by regulation, but rather by MOU, Guidance, etc.</p> <p>(2) It is the statute that provides that local governments must certify compliance with local land use requirements. The proposed regulation merely repeats this statutory requirement. The Offshore/Coastal Wind Regulatory Advisory Panel discussed at length the question of which entity or entities must</p>

	<p>Designating any other state agency, such as the agency exercising control over the parcel, would also be effective, so long as it is clear who provides the land use review for projects on state lands.</p> <p>3) Close alignment of the Commonwealth permitting process with the federal permitting process will significantly reduce uncertainty, duplication of effort and inconsistent mitigation requirements for projects sited on submerged lands or wetlands.</p>	<p>provide this certification in areas where jurisdiction is unclear (e.g., in state waters/on state owned submerged land). The Offshore/Coastal Wind RAP resolved by consensus to leave the existing statutory/regulatory provisions about local government certification as they are set forth in the statute, pending determination of the issue. According to informal guidance from the OAG, the issue cannot be resolved by DEQ's regulatory action. DEQ is seeking clarification of the issue via other means. The consensus recommendations of the Offshore/Coastal RAP are submitted in the current rulemaking as public comment. This issue is discussed in DEQ comments submitted along with the Offshore RAP's public comments.</p> <p>(3) The department's regulations must implement the provisions of this statute. The department also welcomes the opportunity to work with federal agencies, other state agencies, and other relevant entities to minimize uncertainty, duplication, and inconsistencies of the various programs that regulate these projects.</p>
Rovner, Nicole - TNC	<p>1) Given the breadth of the plain meaning of the term "wildlife" and the statutory definitions thereof, as well as the broad way the term is used in another part of the regulation, we submit that limiting the application of that trigger (for mitigation) to a very small subset of wildlife - bats and threatened and endangered species - represents the use of an unacceptable narrow definition.</p> <p>2) We also take issue with the Agency Background Document's reasoning regarding the implications of its lack of siting authority. Questions over whether DEQ would be asked to "forbid" development at a particular site are not relevant to the concept of mitigation, which seeks to accommodate projects by providing ways to avoid, minimize and offset project impacts, as opposed to preventing the project in the first place. 3) We urge DEQ to reconsider its tentative</p>	<p>All comments accepted and taken into consideration during the drafting of the regulation amendments.</p> <p>Additional notes regarding specific comments:</p> <p>(1) & (3): The department continues to evaluate appropriate wildlife mitigation "triggers" and related issues, especially since members of the Regulatory Advisory Panel did not reach consensus concerning inclusion of SGCN Tier 1 & 2 vertebrates.</p> <p>(2) Although the language used may vary, the commenter's viewpoint about "siting" may not vary in substance from the department's. By "siting," the agency is generally referring to land use decisions, which are recognized in both the statute and proposed regulation as being within the purview of local governments. The statutory directive to DEQ, by contrast, is to determine whether significant adverse impacts to wildlife and historic resources are likely and, if so, to prescribe</p>

	<p>decision to exclude Tier 1 & 2 Species of Greatest Conservation Need (SGCN) from the mitigation requirements. 4) The financial cap on wildlife mitigation and post-construction monitoring is too low to permit both adequate monitoring and mitigation, as required by the statute. We recommend that, rather than using an hour-based standard to cap expenses for mitigation and monitoring, DEQ use the dollar-based \$5,000 cap, annually adjusted using the GDPIPD Index. 5) We suggest that language be inserted to clarify that what is due after the first year of monitoring (post-construction monitoring) is a revision of the original mitigation plan, and that it must be adequate to address what was learned in monitoring. 6) We proposed adding an annual reporting requirement that includes expenditures on curtailment and the results of ongoing monitoring. 7) We suggest language be inserted to clarify the type of mitigation that would be acceptable in a situation where avoidance and minimization measures prove to be ineffective. 8) We support DEQ's requiring projects with rated capacity greater than 500 kilowatts and less than 5 megawatts to submit a local land use certification to the department. 9) Because there is no direct relationship between the size of the project and the potential impacts to wildlife, small projects should not be exempt from the requirements of the PBR. We recommend that in addition to the local land use certification that small projects be required to submit the same desktop surveys as other projects are required to submit. 10) Because the topography of the site may change during the project construction the site plan requirements should be revised</p>	<p>necessary mitigation plans to avoid, minimize, and offset these impacts during "construction and operation."</p> <p>(4) Members of the Regulatory Advisory Panel resolved through consensus the concept of a financial cap of \$5000/turbine/year for wildlife mitigation and post-construction monitoring. The RAP considered several ways of expressing this concept, including the both the approach favored by the commenter and the approach proposed in the regulation. Staff's understanding of the RAP's "marching orders" was for the department to select whichever of the suggested language options seemed to work best. The department will continue to evaluate the methodology of expressing the RAP's conceptual consensus.</p> <p>Issues raised in comments 5 – 7 will be evaluated and considered by the department for regulatory amendment, DEQ Guidance, or both.</p> <p>(9) Reduced requirements for projects from 500 kW to 5 MW were discussed at length by members of the Regulatory Advisory Panel. This issue and SGCN were the only issues on which the RAP did not reach consensus (the other "non-consensus" issue -- coastal avian field studies -- being subsequently resolved through consensus by members of the Offshore/Coastal Wind RAP; see public comments submitted on behalf of the Offshore/Coastal RAP in this regulatory action). The department continues to give special attention to evaluating the issues on which the RAP did not reach consensus.</p> <p>(10) Comment accepted. The department will consider addressing the concern by amendment to the proposed regulation, DEQ Guidance, or both.</p>
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	to include topography of the site both before and after construction of the proposed project instead of just showing "existing topography". 11) Language should be added to clarify that the owner or operator must comply with all of the steps laid out in 9VAC15-40-90.	
Scott, Jim - Bent Mountain, VA ("Virginia" on Town Hall)	<p>1) The un-researched statements contained in the economic impact analysis of this regulation are grossly deficient in evaluating the impact to Virginia citizens and businesses. The economic impact analysis must include the fact that industrial wind projects increase the cost of electricity to communities – and the tax burden also necessarily increases because these projects are heavily subsidized (tax payers pay part of cost). Electricity prices increase – taxes increase – this needs to be stated as part of an economic impact assessment. The increased costs associated with wind power will contribute to a slowing of economic growth and have a marked negative economic impact on businesses and also local citizens, already strapped to try to pay higher electric bills. An economic impact analysis should be conducted.</p> <p>2) The proposed regulation does not provide a means of achieving the DEQ stated mission of promoting public health. 3) The proposed regulation does not provide a means of achieving the DEQ stated mission of protecting the environment. 4) The word 'significant' is never defined and is the most 'significant' word used in the entire PBR. Define significant in each context for which it is used. 5) Provide provisions in the regulation that do protect public health, safety, and welfare. 6) The PBR only evaluates a narrow select set of environmental concerns, and therefore, the scope of the impact isn't even being evaluated) 7) The</p>	<p>All comments accepted and taken into consideration during drafting of the regulation amendments.</p> <p>Additional notes regarding specific comments:</p> <p>The issue of how to define "significance" was discussed and resolved by members of the Regulatory Advisory Panel. In effect, the RAP chose to define the term operationally; that is, the occurrence of any of the actions/results/situations enumerated in proposed 9VAC15-40-50 constitutes a mandatory finding by DEQ that "significant" adverse impacts are likely, and a mitigation plan for the specified resources will be required.</p>

	<p>"use and value" of private property of a community impacted by these projects will experience negative "Effects". The 'positive' impact noted in the justification will be outweighed by the negative impact to communities, especially adjacent properties. The adjoining property values suffer the most significant decline due to the health problems related to the noise "effects", which can reach over a mile in the mountains. The "land use" of adjacent property values is also diminished.8) The PBR application must include extensive noise studies for any projects where there are humans within 2 miles of any turbine to provide for the protection of the nearby citizen's "health & well being". These noise studies must be available for third party review, prior to deeming application complete. 9) Industrial wind in the mountains is not responsible wind development and should not be encouraged with a PBR which does not meaningfully evaluate environmental impacts. 10) In the section dealing with analysis of beneficial and adverse impacts on natural resources, the analysis of wildlife species and habitats known to occur on the site as well as within (2) miles of the boundary of a site should both be required not one or the other. 11) Why are the "mountaintops of Virginia included in the analyses of other resources?</p>	<p>Where the commenter raises issues concerning land use, property values, health problems, noise, and the like – Members of the Regulatory Advisory Panel discussed these and related issues. Consistent with legal guidance from the OAG, it was concluded that they do not fall within DEQ's statutory authority over "natural resources" pursuant to the "small renewable energy projects" legislation being implemented by the proposed regulation. Rather, these issues were deemed to fall under the purview of local governments, just as they traditionally have.</p> <p>It was the intent of the RAP and of the department to require the applicant to survey the specified resources both on the site and within the larger area around the site. Comment (10) reflects that the proposed language does not succeed in conveying this intent. (Comments from other parties may be alluding to this same problem.) The department will amend the proposed language to convey the requirements more clearly.</p>
<p>Scott, Michael T. - Bent Mountain, VA</p>	<p>The proposed regulations contain insufficient environmental review, mitigation requirements and restricted public participation for projects of this magnitude (18@2 mw, 500 foot wind turbines). The proposed regulations do not include conditions and standards necessary to protect the Commonwealth's natural resources. 1) There are large negative impacts on the value of land bordering these projects that</p>	<p>All comments accepted and taken into consideration during the drafting of the regulation amendments.</p>

	<p>far surpass the small positive gains for the value of lands suitable for these projects. 2) Wind energy is intermittent and cannot be controlled as a consistent energy source. 3) With a "disturbance zone" defined as the directly impacted area plus a margin of 100 feet, how was it determined that evaluation of the disturbance zone is sufficient for evaluation of potential wildlife impacts? 4) How reliable and complete are the current map-documented information concerning the presence of T&E and SGCN species? 5) Will DEQ accept the applicant's determination that no T&E and SGCN species are present without site specific data collection? 6) It appears that only T&E and SGCN species warrant site-specific data collection, so how was it determined that other wildlife species do not warrant the site-specific data collection? 7) Why is the applicant's Wildlife Report allowed to consist of a summary of the relevant findings of the desktop and field surveys? 8) How can the actual data, records of analysis and consultant reports be reviewed and verified by the DEQ, other agencies or the public if no specific language exists in the proposed regulations for submitting or retention of the actual data? 9) The proposed regulations require raptor migration surveys and acoustic surveys for the presence of bats, but there are no specific protocols or standards for conducting these surveys. How can DEQ validate the above noted surveys without defined protocols for conducting these surveys being specified in the regulations? 10) How was it determined that two miles is a sufficient distance for a survey of natural heritage resources? 11) How was it determined that the area plus 5 miles is a sufficient distance for a view shed</p>	<p>The definition of "disturbance zone" and determination of the area to be evaluated were resolved through consensus of the members of the Regulatory Advisory Panel.</p> <p>As indicated in the proposed regulation, data concerning T&E and SGCN species come from DGIF, which is the state agency with authority over these issues and the data concerning them.</p> <p>The issues raised in comments 5, 6, and 7 were addressed and resolved through consensus of the members of the Regulatory Advisory Panel, including when and how site-specific data collection (i.e., field studies) will be required. Further details were recommended by the RAP for inclusion in DEQ Guidance. The Guidance document will be completed after the regulation becomes final. Copies of the RAP's consensus Guidance recommendations are available by request.</p> <p>(8) The department intends to implement the consensus recommendations of the RAP. The department will also evaluate further clarifications of this section in regulatory amendments, DEQ Guidance, or both.</p> <p>(9) Specific protocols were recommended by the RAP and will be included in DEQ Guidance.</p> <p>(10) & (11) Issues discussed and resolved through consensus of the members of the RAP. Note regarding viewsheds from residences: Consistent with OAG legal advice, the RAP concluded that the statute requires mitigation for significant impacts to</p>
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	<p>analysis? Why are only specific scenic resources included in the viewshed analysis? Why would the viewshed of residences not be considered? 12) Mitigation Plans - What is the threshold of predicted environmental impact that would result in permit denial or project modification? Can an applicant's permit be granted in cases where significant adverse impact to state-listed T&E species cannot be avoided? 13) Why have raptors, migratory birds, and other wildlife use been left out of DEQ required curtailment? What criteria were used to set the standard of "120 hours of curtailment per year per turbine, averaged? 14) Human Health and Safety - What is the basis for not addressing human health concerns in the proposed regulations? What is the basis for not addressing safety concerns in the proposed regulations through public safety related setbacks? 15) Public Participation - Will all documentation included in the public participation portion of the regulations be made available to the public? Will the public be provided an opportunity to comment on the final documentation received by DEQ including an opportunity to comment on any modifications made after the prescribed public comment period? What structure or procedural rules will be followed in conducting the public meeting?</p>	<p>historic-resource viewsheds, and not to others.</p> <p>(12) Mitigation plans -- Determinations will be made on these issues pursuant to the provisions of the regulation. The mitigation provisions were developed through consensus of members of the Regulatory Advisory Panel.</p> <p>(13) Issues resolved through consensus of the members of the RAP.</p> <p>(14) If the commenter is referring to safety-related setbacks and other similar issues (e.g., noise, shadow flicker, ice throws), then the response is that these issues were addressed by the RAP. Consistent with guidance from the OAG, the issues were found to be within the jurisdiction of local governments, and not within the statutory authority of DEQ over "natural resources," as prescribed by the "small renewable energy projects" legislation being implemented by these regulations.</p> <p>(15) Submissions to DEQ pursuant to this regulation are public documents and subject to the Freedom of Information Act. Public participation issues were resolved through consensus of the members of the RAP and are reflected primarily in proposed 9VAC15-40-90. As stated in paragraph D of this section, the public will be afforded 30 days in which to comment "on the technical and the regulatory aspects of the proposal." The applicant is required by proposed paragraph A 5 to make available to the public "copies of the documentation to be submitted to the department in support of the permit by rule application"; that is, the documentation stipulated in the other sections of the proposed regulation, including the sections dealing with Analysis, Determination of Likely Significant Impact, and Mitigation. As for the public meeting, the applicant will be expected to follow the procedures</p>
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		required for public meetings set forth in DEQ Guidance, which will be completed after this regulation becomes final. In response to this comment and similar comments from other commenters, the department continues to evaluate the proposed public participation requirements.
Smith, Tom - DCR	The reference currently listed for the Natural Community Classification in the proposed PBR has been updated and there is now a 2010 edition. The listed date of this reference should be updated in the final PBR.	This technical correction will be made.
Thomas, Byron	Opposed to Wind Project proposed on Bent Mountain, VA.	Comment acknowledged and taken into consideration.
Thomas, Larry V. - Allegheny Highlands Alliance	<p>1) The "Permit by Rule" glossary, "9VAC15-40-10. Definitions." describes the "Small Renewable Energy Projects (Wind)" by the megawatts being produced, but fails to describe a) the immensity of the industrial-scale wind turbines that would be installed and b) the vast areas of deforestation and clearing required for haul road construction. 2) The "Agency Comments" submitted by DEQ are based on the false premise that industrial scale wind turbine facilities are environmentally friendly, that they help reduce the use of foreign oil, and that they will cause a reduction in the use of fossil fuels and emission of greenhouse gases. The evidence is overwhelming that industrial scale wind turbines are not environmentally friendly. Specifically, hundreds of thousands of bats are being slaughtered annually by industrial scale wind turbines. Migratory songbirds are being killed in unprecedented numbers by industrial scale wind turbines. Also, deforestation of mountain ridges removes the roosting trees for bats and creates habitat fragmentation such that interior forest birds cannot survive. Wind is volatile and therefore,</p>	<p>All comments accepted and taken into consideration during the drafting of the regulation amendments.</p> <p>Additional notes regarding specific comments:</p> <p>(1) "Small renewable energy projects" are defined by statute, and the statute cannot be changed by regulatory action.</p> <p>(2) Comments acknowledged and taken into consideration.</p>

	<p>unreliable. 3) This "permit-by-rule" is unconstitutional because there is no avenue for due process of law whereby the public has an avenue to ensure that public comments are part of the process. There is no avenue by which the public can provide input such as currently allowed by having cases brought before the SCC. 4) This PBR does not allow for consideration of cumulative impacts to mountain ridges, ecological regions, or watersheds. The PBR totally ignores consideration or protection of the numerous headwaters within the watersheds on the mountain ridges. The PBR has no reference to the impacts on groundwater as a result of mountain ridge deforestation required for construction of industrial-scale wind turbines. 5) By not investigating proposed wind projects as individual projects, the PBR makes it difficult to comply with local comprehensive planning requirements and requirements for local certification. 6) The requirements for evaluating negative impacts to bats are totally deficient. There is no consideration of the cumulative negative impacts of numerous wind projects on bats. 7) This PBR does not incorporate available knowledge demonstrating that carbon dioxide emissions will probably be increased by construction of industrial scale wind turbine facilities. Deforestation of vast forested mountain ridges will result in less carbon dioxide sequestration. 8) This PBR does not recognize that each project areas is an individual, unique situation. The most the PBR can provide are standards addressing procedures to assess individual sites. The PBR cannot provide an adequate means for assessment. 9) This PBR does not address the</p>	<p>(3) Comment acknowledged and taken into consideration. Due process for the permit by rule and all of DEQ's other permits is provided pursuant to the Administrative Process Act. See, for example, proposed provisions 9VAC15-40-30 B 4 and 9VAC15-40-90 E.</p> <p>(4) Comments acknowledged and taken into consideration. Impacts of proposed projects were discussed and evaluated by members of the Regulatory Advisory Panel as, and to the extent, authorized by the statute. Please note that impacts to surface waters and groundwater [?????] will be addressed, where applicable, pursuant to the statute and proposed regulation (9VAC15-40-30 A 12), regarding "all necessary environmental permits." The proposed permit by rule does not abrogate any other permit requirements.</p> <p>(5) The proposed regulation is a "permit by rule" -- as opposed to an individual permit -- because a "permit by rule" is required by the statute. Each individual project must meet the requirements of the permit by rule regulation, so information about individual projects is both "investigated" and reported by the applicant, as the proposed regulation sets forth. Local government officials, like all members of the public, will have access to the information required by the permit by rule regulation. Local governments will certify whether the proposed project complies with their own land use requirements.</p> <p>(6) Issues were resolved through consensus of the members of the RAP.</p> <p>(7) Comment acknowledged and taken into consideration.</p> <p>(8) Comment acknowledged and taken into account. The PBR approach is mandated by statute and cannot be changed by regulatory action.</p>
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	<p>significant increase in personnel required for inspection or enforcement. The PBR does not address the personnel training costs associated with the additional responsibilities required of personnel in analyzing data presented by wind companies or inspecting all aspects of the wind projects. 10) The notice of intent should be filed at least thirty days prior to the date that it intends to file its application. 11) There should be a requirement to furnish a project summary and generating facility overview. 12) A justification of need statement should be required. 13) A certification of compliance with emergency services requirements and responsibilities should be required. 14) There should be a requirement for the submittal of a description of the generating facility. 15) There should be a requirement for filing of economic and financial data and information with the department. 16) There should be a requirement to submit estimates of the effect of the project on local and the Commonwealth's economy. 17) The owner or operator should be required to describe the impact of the proposed facility on regional development. 18) There should be a requirement for a view shed analysis both at the preconstruction and construction phases. 19) Adverse health consequences on people living in the vicinity of turbine installations should be considered. Evidence of adverse health consequences are usually related to repetitive noise and visual flicker. We strongly recommend that the department establish setbacks of one and a half miles from any structure that is inhabited or used by individuals. 20) There are no reliable studies of the effect of industrial wind turbine facilities on wildlife other than birds and bats. We strongly recommend that the</p>	<p>(9) DEQ considered relevant costs when suggesting a fee amount, and the members of the RAP resolved the issue by consensus.</p> <p>(10) Comment accepted and taken into account. The department will continue to look at the public participation provisions in the regulation, in DEQ Guidance, or in both.</p> <p>(11) & (14) Comment acknowledged and taken into account. Required documentation was established by statute and further resolved by consensus of the members of the RAP.</p> <p>(12) Comment acknowledged and taken into account. Unlike SCC authority, DEQ's statutory authority does not appear to extend to concepts like public need and necessity.</p> <p>(13) Comment accepted. Issue deemed by RAP and OAG advice not to be related to "natural resources," thus falling under local government, rather than DEQ, jurisdiction.</p> <p>(15) – (17) Comments acknowledged and taken into consideration. Issues raised do not appear to relate to "natural resources" and thus do not appear to be within DEQ's statutory authority.</p> <p>(18) Comment accepted and taken into account. Specific requirements for historic-resource impacts, including viewshed impacts, will be addressed in mitigation plans. In appropriate situations, the commenter's suggestion regarding construction-phase viewshed analysis may be utilized.</p> <p>(19) & (21) Comment acknowledged and taken into account. As stated in other responses, issues like noise, shadow flicker, and setbacks were discussed by the RAP and, consistent with legal advice from the OAG, resolved by consensus to be under the jurisdiction of local government, and not to be "natural resources" under DEQ's statutory authority.</p>
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	<p>department establish studies of the effect on wildlife and domestic animals as well as requirements for mitigation of the effect of industrial wind turbine facilities on wildlife and domestic animals. 21) Noise is a major contributing factor to health issues. There should be a requirement for the development and submittal of a "noise exposure" map of the noise present prior to construction; a "predictive noise" study during construction; a "noise exposure" map of the noise to be expected during operation; and a "predictive noise" study for the decommissioning process. As part of these evaluations, there should also be a requirement to evaluate the expected traffic during these periods. 22) Any siting decisions should include "attachment-to-place" considerations (interrelations of human societies and cultures with the physical and biotic elements of an area). 23) There should be a requirement to consider and identify the cultural impacts of a proposed project (i.e., impacts on local landmarks and recreation areas). 24) There should be a requirement for the operator to provide information on the proposed facility to the public and on any mechanism for providing liability compensation for damages. 25) There should be a requirement to evaluate the potential for adverse impacts in an adjoining jurisdiction when a facility is sited in another jurisdiction or state. Cross-border impacts on landmarks, recreation areas, and individuals cannot be ignored.</p>	<p>(20) Comments acknowledged and taken into consideration. Existing statutory and regulatory definitions of "wildlife" generally exclude domestic animals, so DEQ's authority to address appears questionable.</p> <p>(22) & (23) Issues regarding historic resources are encompassed by the statute and included in DEQ's authority. Members of the RAP resolved by consensus how to evaluate these resources and mitigate for significant adverse impacts. Members of the RAP, consistent with legal guidance from the OAG, resolved by consensus to adhere to the general definitions, analyses, and protocols utilized by DHR. A representative of DHR served on the RAP.</p> <p>(24) Comment acknowledged and taken into consideration. Public disclosures and public participation are defined by statute and addressed in the proposed regulation as recommended by consensus of the RAP. Liability and compensation for damages appear to be issues that might flow from enforcement actions. The enforcement provisions of the statute are extensive and, by consensus recommendation of the RAP, are incorporated by reference into the proposed regulation.</p> <p>(25) Comments acknowledged and taken into consideration. Impacts on recreation areas and on individuals were discussed and resolved by consensus of members of the RAP; mitigation for "wildlife" and "historic resources" was recommended; mitigation for other resources was not</p>
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		recommended as not being within the department's statutory authority. The proposed provisions on historic resource protection reflect the consensus recommendations of the RAP regarding landmarks that fall within the definition of "historic resources"; this definition emerged from input from DHR, the state's lead agency on historic resources.
Thomas, Rick - Timmons Group	<p>I recognize that there has been a considerable and laudable effort throughout the development of this regulation to balance the multiple interests associated with affected parties of this regulation and I commend the Department for providing the Commonwealth with a well balanced regulation that provides both significant protection of natural and cultural resources of the Commonwealth and a degree of certainty for planning and constructing needed renewable energy facilities. I believe that both wind energy developers as well as state regulatory personnel within DEQ and participating agencies included DGIF; DCR; DHR would benefit through the development of two Memoranda of Understanding further clarifying the documentation requirements, review procedures and timelines, and technical criteria associated with adverse effect determinations and mitigation requirements (one Memoranda for natural resource issues and one memoranda for cultural resource issues). Regulatory guidance focused on both natural and cultural resource impact determinations, review agency responsibilities and timelines and application documentation requirements will assist in providing the clarity and regulatory certainty needed to foster renewable energy development in the Commonwealth.</p>	<p>Comments accepted and taken into consideration.</p> <p>The department intends to explain details about the submission and consideration of project applications in DEQ Guidance. The RAP recommended a number of technical provisions for inclusion in DEQ Guidance, and the department intends to utilize those recommendations. Additional provisions, including provisions addressing the commenter's suggestions, are envisioned. The department will also consider the commenter's suggestion of inter-agency memoranda of understanding as another avenue for clarifying regulatory processes.</p>
Wampler, Carol	Propose insertion of the	Comments accepted and taken into

- Offshore RAP	consensus-based recommendations from the Offshore/Coastal Wind Regulatory Advisory Panel into the proposed Small Renewable Energy Projects (Wind) Permit by Rule.	consideration during the drafting of the regulation amendments. These comments constitute the consensus recommendations of members of the Offshore/Coastal Wind Regulatory Advisory Panel (Offshore RAP). They are submitted on behalf of the Offshore RAP by DEQ staff. The Offshore RAP recommends that their suggested provisions become amendments to the currently-proposed Wind PBR.
Waring, Elizabeth G. - Army Corps of Engineers - Water Resources Division & John Evans - Army Corps of Engineers	1) The Virginia Regulatory Town Hall document is incorrect under the "Requirement more restrictive than federal" section, where the document states that, "There are no applicable federal regulations." Indeed, activities proposed by the regulation must meet a great number of federal requirements and applicants cannot construct PBR projects without federal permits issued and verified by the Corps of Engineers. 2) A Department of the Army permit under Section 10 and Section 404 will be required to install structures, perform work, dredge, and discharge dredge and fill material in all waters of the United States (including adjacent wetlands and outer continental shelf waters beyond the Virginia 3-mile territorial limit). 3) In evaluating the permit application, we will conduct a public interest review that weighs the foreseeable benefits of the proposed project against reasonable foreseeable detriments. Prior to making a decision, we will fully consider the views of the Federal and State resource agencies, local government, and the general public. 4) The Corp's District Commander is required to consult with the U.S. Fish and Wildlife Service and/or the National Oceanic and Atmospheric Administration consistent with the Endangered Species Act of 1973, as amended if the issuance of a Corps permit may affect T&E species or their critical habitat. 5)	All comments accepted and taken into consideration during drafting of the regulation amendments. The commenter provides helpful explanations about federal processes, especially permitting processes by the Army Corps of Engineers. Virginia's "small renewable energy projects" legislation provides a regulatory framework for protecting natural resources, specifically "wildlife" and "historic resources." To the best of our knowledge, these resources fall primarily under the authority of agencies -- at both the federal and state levels -- that have advisory, as opposed to regulatory, authority. The members of the Regulatory Advisory Panel considered the wildlife-protection guidelines being developed by USFWS (primarily via input from DGIF) when developing the recommended wildlife provisions of the proposed wind PBR. Likewise, RAP members considered the historic-resource guidelines of DOI (primarily via input from DHR) when developing the recommended historic-resources PBR provisions. These guidelines would, in the department's view, constitute the federal analog to the mandates of the Virginia statute. It is the department's understanding, however, that these federal standards are <u>not</u> regulatory. They become regulatory to the extent that they are incorporated into regulations like the PBR – or, for that matter, into ACOE-administered permits. It is well settled that state law does not abrogate federal law. An applicant for a wind PBR in Virginia will be expected to

	<p>The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 also requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). 6) The District Commander must also comply with Section 106 of the National Historic Preservation Act if issuance of a permit could affect historic resources. The Corps is required to complete coordination with the Virginia Department of Historic Resources and possibly the Advisory Council on Historic Resources if the proposed Corps permit activity may affect historic properties, including the viewshed. 7) There are currently 59 shallow draft and 13 deep draft navigation projects authorized within the PBR area. There are also other navigation channels that are not within the civil works authority of the Corps that also need to be taken into consideration. 8) In order to issue a permit, the Corps must determine that the project complies with the 404 (b) (1) EPA guidelines (in the case of 404 actions); and we must also find that the project is not contrary to the public interest.</p>	<p>meet all applicable federal requirements, including those administered by ACOE. The department looks forward to continuing to work cooperatively with ACOE in administering our respective permit programs in a coordinated fashion.</p>
<p>Webb, Rick - Virginia Wind - Monterey, VA</p>	<p>The first problem with both the legislation and the proposed regulation is the definition of a "small wind energy project" which is specified as any wind project up to 100 MW rated capacity. By any reasonable definition a 100-MW wind energy project is a "large wind energy project". The regulations proposed by DEQ will provide only minimal protection for western Virginia's natural resources from degradation</p>	<p>All comments accepted and taken into consideration during the drafting of regulation amendments.</p> <p>Additional notes concerning specific comments: The definition of "small" is found in the statute and is not subject to change by regulatory action.</p>

	<p>associated with what is, in fact, large scale industrial development. 1) How was it determined that a disturbance zone defined as the directly impacted area plus a margin of 100 feet provides a sufficient criterion for evaluation of potential wildlife impacts? 2) How reliable and complete is the currently available map-documented information concerning the presence of T&E and SGCN species? 3) If there are gaps or uncertainties in mapped T&E and SGCN wildlife species data for the project area, will the DEQ accept an applicant's determination that there is no evidence for the presence of T&E and SGCN species? 4) Given that the legislation does not appear to impose any such limitation, how was it determined that only T&E and SGCN wildlife species warrant site-specific data collection? 5) The proposed regulations require raptor migration surveys and acoustic surveys for the presence of bats. However, the proposed regulations do not specify protocols or standards for the conduct of these surveys. Likewise no protocols for the analysis of map-documented information on wildlife use, breeding bird surveys, habitat surveys, or follow-up mist-netting or harp-trapping surveys for bats are specified. What protocols or standards does the DEQ intend to require, and if it is the intent of the legislation to create a PBR process that clearly establishes permit review requirements "upfront", is it not necessary to include explicit language in the regulations concerning protocols and standards required for all surveys, data collection, and analysis? 6) If the public is to be provided an actual opportunity to make informed and meaningful comments on the proposed PBR regulations, doesn't the public</p>	<p>(1) Issue resolved by consensus of members of RAP.</p> <p>(2) & (3) This information is generated and updated by DGIF, and the applicant is directed in the proposed regulation to utilize DGIF's databases. DEQ will receive and evaluate the applicant's submissions. The statute requires DEQ to consult with sister agencies, including DGIF, before approving or disapproving an application.</p> <p>(5) & (6) & (15) & similar: Protocols and other "how to" details were developed by consensus of the RAP. The department intends to include these recommendations in DEQ Guidance, which will be written after the regulation becomes final. Copies of the RAP's suggested Guidance provisions are available on request.</p> <p>The RAP resolved by consensus which of their recommendations should appear in the regulation and which in Guidance.</p> <p>Guidance drafting is not subject to Administrative Process Act procedures; however, the department intends to seek public input when it drafts Guidance for these regulations.</p>
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	<p>need an opportunity to examine and comment on the protocols and standards for required surveys, data collection, and analysis? 7) A "Wildlife Report" summarizing the relevant findings of the desktop and field surveys is required. The draft regulations do not specify that the applicant shall provide, or even retain, actual data, records of analysis, and consultant or contractor reports. Without that information there is no opportunity for DEQ, other resource management agencies or the public to examine the data and verify the integrity of the analysis. Does DEQ plan to require access to all wildlife data and analysis results? Does DEQ plan to make all wildlife data and analysis results available to other resource management agencies and the public? 8) The draft regulations do not address potential impacts to aquatic resources. 9) Mitigation plans: Is there a threshold of potential environmental harm that will result in permit denial or substantial project modification? 10) Can wind energy projects be permitted in cases where significant adverse impacts to state-listed T&E wildlife cannot be avoided? 11) The draft regulation provides that in the case where a proposed project is likely to significantly diminish the integrity of a historic resource, the mitigation requirement is that the impact be minimized to the extent practicable through design of the project or installation of vegetation or other screening. If impacts cannot be avoided by such measures, then the applicant shall develop a reasonable and proportionate mitigation plan that offsets the adverse impact. What does this mean; does it mean that an applicant might satisfy mitigation requirements by providing protection for historic resources other than the particular historic</p>	<p>(7) & 16) & similar: Comments accepted and taken into account. The department continues to consider processes for data submission/evaluation/retention/public availability and related issues, and intends to clarify certain requirements in the regulation, in Guidance, or in both.</p> <p>(8) As explained in the Town Hall -02 document, aquatic resources were deferred for consideration by the Offshore/Coastal Wind RAP. The Offshore RAP completed its work on August 17, and its consensus recommendations are submitted in this rulemaking as public comment on the original Wind PBR.</p> <p>(9) & (10) Comments accepted and taken into consideration. Pursuant to the statute, DEQ will make approval decisions (including approval of mitigation plans) pursuant to the final version of the PBR regulation, after consulting with sister agencies, including DGIF, which has authority over T&E issues.</p> <p>11) Comment accepted and taken into consideration. These questions were addressed and resolved by consensus of members of the RAP, which included a representative of DHR. In addition, the RAP recommended provisions for DEQ Guidance (which largely incorporate DHR's guidance provisions) that further explain how historic-resources mitigation should be accomplished. The department intends to utilize these recommendations when Guidance is drafted. Copies of the RAP's recommended Guidance provisions are available on request.</p>
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	<p>resource that is adversely affected by the project? 12) What criteria or rationale support the decision to limit money spent on, or cost of, avoidance of bat mortality to \$5,000 per turbine? 13) Has the DEQ considered the cumulative impact on bat populations due to the combined impacts of white-nose syndrome and turbine-related mortality? 14) Why hasn't the DEQ required curtailment or turbine shutdown to protect raptors and migratory birds? 15) Will the DEQ review and approve monitoring plans, and what criteria, including search methods, search frequency, search area, and searcher qualifications, will the DEQ consider in approving monitoring plans? 16) Will DEQ require submission of all monitoring data, and will this data be made available to the public? 17) Will DEQ or other natural resource management agencies have unrestricted access to project sites for inspection and oversight of monitoring programs? 18) Will project operators and contractors be required to immediately notify DEQ if state-listed T&E or federally-listed endangered species are harmed or killed at wind project sites? 19) Will the documentation related to the public participation requirements to be made available to the public for review during the comment period be accessible during business hours throughout the comment period or only during limited times scheduled by the applicant? 20) Will the public be provided an opportunity to copy the documentation made available to the public for review during the comment period? 21) Will the documentation made available to the public for review during the comment period include the applicant's Wildlife Report and all related data and analysis, the applicant's</p>	<p>(12) Comment accepted and taken into consideration. The issue was resolved by consensus of the members of the RAP.</p> <p>(13) Comment accepted and taken into consideration. Members of the RAP discussed the impacts of white-nose syndrome.</p> <p>(14) Comment accepted and taken into account. The RAP resolved wildlife mitigation issues by consensus, and the RAP did not recommend curtailment for avian impacts.</p> <p>(17) Comment accepted and taken into account. Section 10.1-1197.10 of the statute sets for information regarding right of entry.</p> <p>18) Based on informal legal guidance from the OAG, the department believes that DGIF's authority over T&E species is not altered by the PBR program, and that the owner or operator will be required to report to DGIF, just as he does now. DEQ will regulate wildlife mitigation plans and the owner/operator's post-construction monitoring, as required by the statute and as recommended by consensus of the RAP.</p> <p>(19) – (24) Comments accepted and taken into account. In addition to the proposed regulatory provisions on public participation recommended by consensus of the RAP, the department will develop Guidance to address more specific details. It is anticipated that the commenter's questions would be among those that DEQ Guidance will address. We interpret the commenter's questions as being suggestions he would like for the department to adopt.</p>
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	<p>mitigation and monitoring plans, and the applicant's analysis of the potential impacts of the project's operation on the attainment of national ambient air quality standards? 22) What structure or procedural rules will be followed in the conduct of the public meeting? 23) Will the written comments submitted by the public to the applicant be provided to DEQ and will the public have access to the applicant's summary of and responses to comments? 24) Will the public be provided an opportunity to comment on the final documentation considered by DEQ in its review of the application, including an opportunity to comment on modifications made after the prescribed public comment period? 25) Cumulative Impacts: Does DEQ recognize that wind energy development in western Virginia will involve multiple separate projects, and how does DEQ justify proposal review and mitigation requirements for wind projects as if the effects of individual projects will occur in isolation from the effects of other projects?</p>	
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